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TOWNSEND and TOWNSEND and CREW LLP

By: Lois M. Simón
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PATENT
Docket No.: 014058-013300US
Client Ref. No.: 208

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Sally Mossman et al.

Application No.: 10/068,171

Filed: February 4, 2002

For: IMMUNOSTIMULANT
COMPOSITIONS COMPRISING
AMINOALKYL GLUCOSAMINIDE
PHOSPHATES AND SAPONINS

Examiner: Bahar

Art Unit: 1617

PROVISIONAL ELECTION AND
TRAVERSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Requirement for Restriction dated October 1, 2003,
Applicants hereby provisionally elect to prosecute the claims of Group IX, with traverse.
This group comprises claims 90-92 in part.

Applicants respectfully traverse the requirement for restriction insofar as it concerns restriction between Groups IX, XI, XII and XIV, for the reasons discussed below, and request that the claims of these four groups be examined together.

(1) Groups IX and XI.

The claims of Group IX are to methods for enhancing the immune response comprising administering an AGP (aminoalkyl glucosaminide phosphate) of

Formula (Ia) and a saponin. Those of Group XI are similar, in nature, except that the AGP is of Formula (Ic).

The compounds of formulas (Ia) and (Ic), as indicated, all fall within the class of AGPs. This is a relatively small and well-defined class of relatively recently discovered compounds. The compounds defined by these formulas were discovered by David Johnson, a colleague of the present inventors at Applicants' assignee Corixa Inc. and have recently been patented. Four patents have issued so far, and have been cited in a previous Information Disclosure Statement and in one filed concurrently herewith.

The AGPs of Formulas (Ia) and (Ic) are different but related compounds, differing primarily in that the aglycon portion of the (Ia) compounds is acyclic whereas that portion of the (Ic) compounds contains a cyclic moiety. Though the compounds have that difference in structure they are members of the same overall AGP family. In defining the compounds in this application, Applicants chose to use the convention of indicating one subtype of AGPs as being of Formula (Ia) and the other as being of Formula (Ic). That alone is not sufficient to require restriction between these members of the same monosaccharide family. In addition, as shown by the Requirement, the claims of both groups are classified in exactly the same class and subclass. No burden would exist in examining them together; indeed examination together would avoid duplication of effort.

Withdrawal of the requirement for restriction between Groups IX and XI is respectfully requested.

(2) Groups IX and XII, and Groups XI and XIV, respectively.

Groups IX and XII are properly examinable together as combination and subcombination where the subcombination is relied on for patentability. MPEP 806.05 *ff*.

The combination in the present case is the three-way combination of AGP, saponin and antigen (Group XII); the subcombination is the two-member AGP/saponin

Sally Mossman, Lawrence S. Evans, Jory R.
Baldrige
Application No.: 10/068,171
Page 3

PATENT

combination (Group IX). Patentability of claims in both groups will hinge on the patentability of employing the subcombination of AGP and saponin for the claimed use. Under such a condition, two-way distinctness is required for restriction; MPEP 808.05(c). However, in the present case, the requirement of subsection (a) of this section of the MPEP, namely a showing that the combination does not require the particulars of the subcombination for patentability, has not been met.

Withdrawal of the requirement for restriction between Groups IX and XII is respectfully requested.

For the same reason, the requirement for restriction between claims of Groups XI and XIV also should be withdrawn.

(3) Finally, as the requirement for restriction between the AGP/saponin claims of Groups IX and XI should be withdrawn, for the reasons given above, these four groups (IX, XI, XII and XIV) should be examined together in this Application.

CONCLUSION

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned.

Respectfully submitted,

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